COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT WATER QUALITY CONTROL COMMISSION

REGULATION NO. 53

DOMESTIC WASTEWATER TREATMENT GRANT FUNDING SYSTEM 5 CCR 1002-53

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DOMESTIC WASTEWATER TREATMENT GRANT FUNDING SYSTEM

53.1 <u>AUTHORITY</u>

Section 25-8-202(1) (e) and (g), C.R.S., and section 25-8-703, C.R.S., as amended, of the Colorado Water Quality Control Act provide authority for this regulation.

53.2 PURPOSE

The purpose of the Domestic Wastewater Treatment (DWWT) Grant Program is to provide financial assistance to governmental agencies as well as to counties representing unincorporated areas for planning, design and construction of eligible DWWT projects serving a population of not more than 5,000 persons. This grant is not intended to reimburse DWWT grant recipients for any fees or penalties assessed by the Water Quality Control Division (Division).

The funding system is intended to identify those governmental agencies with wastewater treatment problems and financial needs and to allocate funds for the most beneficial program of public health protection and water quality improvement.

53.3 **DEFINITIONS**

See the Colorado Water Quality Control Act and the Water Pollution Control Revolving Fund (WPCRF) Rules (Regulation #51) for additional definitions.

- (1) "<u>Domestic Wastewater</u>" A combination of liquid wastes which may include chemicals, household wastes, human excreta, animal or vegetable matter in suspension or solution.
- "Governmental Agency" Any regional commission, county (or county on behalf of unincorporated areas), metropolitan district offering sanitation service, sanitation district, water and sanitation district, water conservancy district, metropolitan sewage disposal district, other special district used for funding a domestic wastewater treatment works project, service authority, city and county, city, or town.
- (3) "Management Agency" Any governmental agency appropriately designated by the Governor for wastewater management responsibilities in a certified area wide Water Quality Management Plan prepared under Section 208 of the federal Clean Water Act.
- (4) "Pollution" Activities or events that degrade the physical, chemical, biological, and radiological integrity of water.
- (5) "Project" A new wastewater treatment system or a specific improvement to an existing wastewater treatment system, phase or segment.
- (6) "Public Health Hazard" Any contamination of ground or surface waters, caused by inadequate treatment works or disposal of inadequately treated sludge, which potentially endangers public health through contamination of drinking water supplies or direct public exposure. To qualify as a

public health hazard, the contamination must be documented by means of a sanitary survey or engineering report submitted by a governmental agency to the Division.

- (7) "Significant Non-Compliance" Violation of limits in a discharge permit, issued under section 402 of the federal Act and/or Part 5 of the state Act to the extent that: any 2 or more exceedances of a non-toxic parameter which are 40% or more over the permit limit or 4 marginal violations (less than 40% over the permit limit) of the permit occur within a 6 month period. For toxic parameters, significant non-compliance is determined by 2 or more exceedances of a permit limit which are 20% or more over the limit or 4 marginal violations (less than 20% over the permit limit) of the permit within a 6 month period. Significant non-compliance is determined within the 12 month period prior to the time the Project Eligibility List is prepared.
- (8) "Small Community" A governmental agency and counties representing unincorporated areas with an existing population of not more than 5,000 persons or an unincorporated area (represented by its county) existing on January 1, 2001 that serve populations of not more than five thousand persons.
- (9) "Treatment System" Any devices and systems used in storing, treating, neutralizing, stabilizing, disposing, recycling or reclamation of domestic wastewater and biosolids; the term also includes appurtenances such as intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, extensions, improvements, remodeling, additions, and alterations thereof.

53.4 PROJECT IDENTIFICATION PROCEDURES

- (1) Each year that funds are appropriated, the Water Quality Control Commission (Commission) will schedule a hearing for public review and comment on the grant fund Intended Use Plan (IUP) that will include a list of eligible DWWT projects, a description of the use of the funds from the previous year and the intended use of the funds for the current year. Governmental agencies that are included in the IUP will be notified of the public hearing. After a public notice and comment period, the Commission shall approve the IUP at a public hearing by December 31 of each year.
- (2) In formulating and revising the IUP each year, the Division shall:
 - Utilize the current WPCRF Project Eligibility List to select potential projects that serve a
 population of not more than 5,000 persons and are eligible to receive DWWT grants.
 One of the following categories will be assigned to each project listed:

<u>Category 1</u> includes those projects that improve or benefit public health or that will remediate a public health hazard as defined in this regulation.

Category 2 includes those projects that enable an entity to achieve permit compliance.

<u>Category 3</u> includes those projects that contribute to the prevention of a public health hazard; enables an entity to maintain permit compliance; or enables an entity to address a possible future effluent limit or emerging issue.

Note: Nonpoint source, storm water and source water protection projects are not eligible for DWWT grant funding. Eligibility List Categories are determined based on information provided by the applicant during the Annual Eligibility List Survey process. Based upon receipt and review of the Preliminary Engineering Report and a grant application, the assigned Eligibility List Category may be revised during the prioritization process to more accurately reflect the proposed project.

b. Provide a status on how the funds were actually utilized from the previous year.

- c. Provide a description of how the funds are anticipated to be expended during the current year.
- (3) Throughout the funding year, the Division may provide assistance:
 - a. To projects listed in the Project Eligibility List that are ready to proceed;
 - b. In the form of a planning grant from the DWWT Grant Program to eligible projects listed in the Project Eligibility List, when the governmental agency notifies the Division that it is ready to proceed with its facility plan.
 - c. To an eligible governmental agency that is not identified in the Project Eligibility List when there is an unforeseen emergency situation.
 - d. Grant funds cannot be used to reimburse for costs related to fees and/or penalties assessed by the Division.

Under c above, the governmental agency will then be included on a subsequent Project Eligibility List for the Commission's approval.

53.5 FUNDING CRITERIA

Funding is dependent upon appropriations from the State Legislature and will be provided for planning, design and/or construction to eligible projects. Funding for a project will be provided when:

- (1) The governmental agency's project is identified in the Project Eligibility List approved by the Commission or can be added to the Project Eligibility List in conformance with section 53.4(3) above:
- (2) The governmental agency submits an application by the deadline established in the annual IUP;
- (3) The Division obtains a certificate of financial need issued by the Division of Local Government (DLG); and
- (4) Funds are available. If it is determined that the DWWT Grant Program lacks sufficient funds to cover grants for all eligible projects that are ready to proceed within the funding year, Category 1 projects will be funded prior to Category 2 projects, which will be funded prior to Category 3 projects. Within each category, the following criteria will be used to further prioritize the projects:
 - (a) Projects serving a small community. Population priority points will be assigned based on the following schedule:

Up to 1000 Population 20 Points 1,001 to 5,000 Population 15 Points

- (b) Entities that have a greater financial need as outlined in the following procedures. Financial need is determined using a priority point system that ranks projects based on estimated monthly user charges as a percentage of median household income (Ability to Pay) and project cost per tap (Local Burden). The financial data used are from the most recently audited financial statements available to and interpreted by the DLG. Points are assigned based on the following criteria:
 - (i) Ability to pay (total annual sewer cost per single family equivalent as a % of median household income)

Over 3% 20 Points
Over 2% up to 3% 15 Points
Over 1% up to 2% 10 Points
1% and under 5 Points

(ii) Local burden (total project cost per equivalent residential tap)

Over \$5,000 20 Points
Over \$3,500 15 Points
Over \$2,000 10 Points
\$2,000 and under 5 Points

- (c) Projects of any governmental agency that is under an enforcement action and/or compliance schedule relating to water quality standards, as long as the enforcement action does not relate to administrative requirements of the program, will be assigned 10 points.
- (d) Projects of any governmental agency that will result in a reduction in the discharge of pollutant(s) to a segment impaired for the relevant pollutant(s) will receive 10 points
- (e) Projects that implement the "Green Infrastructure/Sustainable Measures" will be assigned 5 points.
- (5) Grant funds cannot be used to reimburse for costs related to fees and/or penalties assessed by the Division.

53.6 - 53.9 **RESERVED**

53.10 STATEMENT OF BASIS AND PURPOSE REGARDING STATE GRANT PRIORITY SYSTEM

In accordance with the requirements of 24-4-103(4), the Commission makes these findings and adopts this Statement of Basis and Purpose.

The subject regulations are in implementation of the requirements of the Colorado Water Quality Control Act, C.R.S., 25-8-101., et seq. Section 202 of the Act requires that the Commission administer construction grants for municipal waste treatment facilities for the State. In particular, C.R.S., 1973, 25-5-202(1)(e)(g) provide as follows: The Commission shall develop and maintain a comprehensive and effective program for prevention, control, and abatement of water pollution and for water quality protection throughout the entire state and, in connection therewith, shall:

- (e) Perform duties assigned to the Commission in part 7 of this article with respect to the location, design, construction, financing, and operation of domestic wastewater treatment plants
- (g) Promulgate regulations and adopt priority ranking for the administration of federal and other public source construction loans or grants which the Commission or the Division administers which loans or grants shall not be expended for any purpose other than that for which they were provided.

These regulations provide a format for determining which eligible projects should receive funds. The priority system is in five parts as follows:

- 5.5.1 Authority
- 5.5.2 Purpose

- 5.5.3 Priority System
- 5.5.4 Prioritization within Categories
- 5.5.5 Determination of Project Funding
- 5.5.6 Update of Categorization and Ranking List

53.11 <u>STATEMENT OF BASIS SPECIFIC STATUTORY AUTHORITY, AND PURPOSE (1991 REVISIONS)</u>

The provisions of Sections 25-8-202(1)(e), and (g); 25-8-308(1)(d); and 37-95-107.6(4) C.R.S., provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with Sections 24-103(4) C.R.S., the following statement of basis and purpose.

BASIS AND PURPOSE

Many changes were incorporated into the priority system procedures (5.5.3) to allow additional projects that are eligible under this program to receive funding. The categories added were for potential health hazards, facilities that are beyond design life and in need of repair and sludge disposal. Categories for potential health hazards and facilities beyond design life and in need of repair were added to assist communities with pollution prevention to limit initiation of compliance and enforcement measures. The sludge disposal category was added to assist communities with meeting State/EPA sludge management regulations. The changes were also made to coincide with the Water Pollution Control Revolving Fund (WPCRF) 5.2.5 priority system procedures. The changes made will allow the Division to utilize one priority point system for all State priority lists. This system will accommodate the State grant program, the Sewer Needs List for the Division of Local Government, the WPCRF and any future federal grant program.

53.12 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE (1992 REVISIONS)

The provisions of Sections 25-8-202(1)(e), and (g); 25-8-308(1)(d); and 37-95-107.6(4) C.R.S. provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with Sections 24-4-103(4) C.R.S., the following statement of basis and purpose.

BASIS AND PURPOSE

The FY93 State Sewage Construction Grant Priority List is presented to the Water Quality Control Commission for agency action and public comment. The regulations under 5.5.4 provide for projects to be listed in a priority basis for funding dependent upon appropriations from the State Legislature. Because of lottery sales, it is possible this program will receive \$2 million for funding in FY93-94.

53.13 <u>STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE (1993)</u> <u>REVISIONS)</u>

The provisions of Sections 25-8-202(1)(e), and (g); 25-8-308(1)(d); and 37-95-107.6(4) C.R.S. provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with Sections 24-4-103(4) C.R.S., the following statement of basis and purpose.

BASIS AND PURPOSE

The FY94 State Sewage Construction Grant Priority List is presented to the Water Quality Control Commission for agency action and public comment. The regulations under 5.5.4 provide for projects to be listed in a priority basis for funding dependent upon appropriations from the State Legislature. The Division has received \$2 million for funding in FY93-94.

53.14 <u>STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE (1994)</u> <u>REVISIONS)</u>

The provisions of Sections 25-8-202(1)(e), and (g); 25-8-308(1)(d); and 37-95-107.6(4) C.R.S. provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with Sections 24-4-103(4) C.R.S., the following statement of basis and purpose.

BASIS AND PURPOSE

The FY95 State Sewage Construction Grant Priority List is presented to the Water Quality Control Commission for agency action and public comment. The regulations under 5.5.4 provide for projects to be listed in a priority basis for funding dependent upon appropriations from the State Legislature. The Division has received \$2 million for funding in FY94-95.

53.15 <u>STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE (1995)</u> REVISIONS)

The provisions of Sections 25-8-202(1)(e), and (g); 25-8-308(1)(d); and 25-8-703 C.R.S. provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with Sections 24-4-103(4) C.R.S., the following statement of basis and purpose.

BASIS AND PURPOSE

The FY96 State Sewage Construction Grant Priority List is presented to the Water Quality Control Commission for agency action and public comment. The regulations under 5.5.4 provide for projects to be listed in a priority basis for funding dependent upon appropriations from the State Legislature. The Division has received \$2 million for funding in FY95-96. The Division will be utilizing 5% (\$100,000) for Administration of the program.

53.16 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE: JULY, 1997 RULEMAKING

The provisions of sections 25-8-202 and 25-8-401, C.R.S., provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with section 24-4-103(4) C.R.S., the following statement of basis and purpose.

BASIS AND PURPOSE

The Commission has adopted a revised numbering system for this regulation, as a part of an overall renumbering of all Water Quality Control Commission rules and regulations. The goals of the renumbering are: (1) to achieve a more logical organization and numbering of the regulations, with a system that provides flexibility for future modifications, and (2) to make the Commission's internal numbering system and that of the Colorado Code of Regulations (CCR) consistent. The CCR references for the regulations will also be revised as a result of this hearing.

53.17 <u>STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE: FEBRUARY, 1998 RULEMAKING</u>

The provisions of sections 25-8-202(1)(e) and (g); 25-8-308(1)(d); and 25-8-703, C.R.S., provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with section 24-4-103(4) C.R.S., the following statement of basis and purpose.

BASIS AND PURPOSE

The FY98 State Sewage Construction Grant Priority List has been approved by the Water Quality Control Commission. Regulation # 53 provides for projects to be listed in a priority basis for funding dependent upon appropriations from the State Legislature.

The Division has received \$3 million for funding in FY96-97 and \$3 million for FY97-98. The Division will be utilizing up to 5% of each grant for administration of the program.

The Commission received comments from the Denver Regional Council of Governments Water Resource Management Advisory Committee. There appear to be three concerns by DRCOG, that are addressed as follows.

The Division has always in the past and will continue in the future (by means of the site approval process and Commission policy established in the Water Pollution Control Revolving Fund Rules) ensure that projects are identified in the appropriate water quality planning documents prior to the award of funds to construct the project. The Division has committed to aggressively involve DRCOG as well as other water quality management agencies with the WPCRF Intended Use Plan and the State Construction Grant List as they are developed.

The Clear Creek/Arapahoe MHP and the Clear Creek/Herman Area are two distinct projects.

The Box Elder Water and Sanitation District is a community of approximately 40 homes near the Tomahawk Truck Stop in Adams County; however, the address listed with Special Districts to send correspondence is in the City of Englewood. The Division is willing to include both the location of the District and the address where they send correspondence.

53.18 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE (1999) REVISIONS

The provisions of Sections 25-8-202(1)(e), and (g); 25-8-308(1)(d); and 25-8-703 CRS. provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with Section 24-4-103(4) C.R.S., the following statement of basis and purpose.

BASIS AND PURPOSE

The FY99 State Sewage Construction Grant Priority List is presented to the Water Quality Control Commission for agency action and public comment. Regulations No. 53 provide for projects to be listed in a priority basis for funding dependent upon appropriations from the State Legislature.

The Division has received \$3 million for funding in FY97-98 and \$3 million for FY98-99. The Division will be utilizing up to 5% of each grant for administration of the program.

53.19 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE (2000) REVISIONS

The provisions of sections 25-8-202(1)(e) and (g); 25-8-308(1)(d); and 25-8-703 C.R.S. provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with Section 24-4-103(4) C.R.S., the following statement of basis and purpose.

BASIS AND PURPOSE

The subject regulations are in implementation of the requirements of the Colorado Water Quality Control Act, C.R.S., 25-8-101. <u>et seq.</u> Section 25-8-202 of the Act requires that the Commission promulgate regulations for the administration of grants for domestic wastewater treatment facilities for the State. In particular, C.R.S., 25-8-202(1)(e) and (g) provide as follows: "The Commission shall develop and maintain

a comprehensive and effective program for prevention, control, and abatement of water pollution and for water quality protection throughout the entire state and, in connection therewith, shall:

- (e) Perform duties assigned to the Commission in part 7 of this article with respect to the location, design, construction, financing, and operation of domestic wastewater treatment plants.
- (g) Promulgate regulations and adopt priority ranking for the administration of federal and other public source construction loans or grants which the Commission or the Division administers, which loans or grants shall not be expended for any purpose other than that for which they were provided.

A stakeholders group with members from the Southeast Council of Governments, Clear Creek Watershed Forum, a consulting engineering firm, the State Environmental Information Center, the Water Quality Control Division and the Division of Local Government of the Department of Local Affairs met to create new regulations to provide a format for determining which eligible projects should receive funds under the Domestic Wastewater Treatment (DWWT) Grant Program.

The need for revising Regulation No. 53 came about when the previous priority system that was used for both grants and loans under Regulation No. 51 (Water Pollution Control Revolving Fund (WPCRF) Rules) was deleted and replaced with a system that could fund water quality projects beyond wastewater treatment. Since Colorado's Water Quality Control Act only allows grants to small community domestic wastewater treatment projects, separate regulations had to be established to provide criteria for eligible grants. It is the Division's intent to continue to utilize the list of projects developed under the WPCRF Rules by extracting the projects that would meet the criteria for DWWT Grant Program established under this regulation.

Section 53.4(3) allows the Division to provide assistance to governmental agencies that were not identified in the Intended Use Plan and yet still need to move ahead with a project or make adjustments in an emergency situation. The focus on providing funds for planning or a quick fix in an emergency and then ensuring that those projects are identified on a subsequent approved plan provides flexibility while preserving the credibility of the process.

The timing of the public rulemaking hearing for this regulation will not accommodate approval of the Intended Use Plan for the year 2000 by December 31, 1999. The 2000 Intended Use Plan will be developed as Regulation No. 54 for the Commission's approval in February 2000 after adoption of these regulations. Until this process is complete, the Division will continue to award grant contracts from the Commission's approved 1999 State Construction Grant Priority List.

The new system as proposed will provide categories of eligible projects, provide mechanism for funding throughout the year, identify the use of the grant funds and allow for prioritization as necessary. The proposed system is still similar to the WPCRF and can accommodate this DWWT Grant Program, the Sewer Needs List for the Division of Local Government, and any future federal grant program.

53.20 <u>STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE (2001)</u> <u>REVISIONS</u>

The provisions of sections 25-8-202(1)(e) and (g); 25-8-308(1)(d); and 25-8-703 C.R.S. provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with Section 24-4-103(4) C.R.S., the following statement of basis and purpose.

BASIS AND PURPOSE

With the passage of HB 1246, the scope of the DWWT Grant Funding System has been expanded to enable the program to fund counties on behalf of unincorporated areas with populations of not more than

5,000. This change is incorporated into this Regulation #53 and involves expanding the definition of "governmental agency" to include "counties on behalf of unincorporated areas" and the definition of a "small community" to include unincorporated areas of not more than 5,000 population.

The body of the regulation does not need to be changed because it has always been broad enough to identify the needs in counties. The Domestic Wastewater Treatment Grant Program funds were not made available to counties on behalf of unincorporated areas until the statutory change was made and approved March 20, 2001. Paragraph (1)(b)(l) of 25-8-703 gives the Division authority to enter into contracts with counties on behalf of unincorporated areas and it will be repealed July 1, 2006.

53.21 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE (MAY 2004 RULEMAKING)

Sections 25-8-202(1)(e) and (g); 25-8-308(1)(d); and 25-8-703, C.R.S. provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with Section 24-4-103(4), C.R.S., the following statement of basis and purpose.

BASIS AND PURPOSE

Recent statutory amendments led to changes to the regulations governing another of the Division's funding programs, the Water Pollution Control Revolving Fund Rules, Regulation No. 51. Since the Commission was planning to consider changes to Regulation No. 51, the Attorney General's Office also examined Regulation No. 53, focusing on streamlining certain provisions of the two regulations. The Attorney General's Office, along with the Division and a stakeholders group, also discussed options to simplify the process for the Commission's annual approval of the program's "Intended Use Plan."

In order to accomplish these objectives, the Commission made the following changes to Regulation No. 53:

Section 53.3 - Detailed definitions of a public health hazard and significant non-compliance were added to assist staff in determining under which category a project should be listed.

Section 53.4(1) - A change was made to indicate that the Domestic Wastewater Treatment Grant Program Intended Use Plan will be approved annually by the Commission in a public forum after a public notice and comment period, but not through a rulemaking process.

Section 53.4(2) - Category 1 and 2 were explained further to assist staff in categorizing projects on the Project Eligibility List.

53.22 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE (JULY 2008 RULEMAKING, EFFECTIVE DATE JANUARY 1, 2009)

The provisions of sections 25-8-202(1)(e) and (g); 25-8-308(1)(d); and 25-8-703 C.R.S. provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with Section 24-4-103(4) C.R.S., the following statement of basis and purpose.

BASIS AND PURPOSE

Changes to the Rules have been made to streamline the Intended Use Plan process. The categorization and prioritization system that are included in the Water Pollution Control Revolving Loan Fund Rules have been incorporated into the Domestic Wastewater Treatment Grant Rules. These revisions and will enable the Division to develop one Intended Use Plan and Project Eligibility List, that will be used for both the grant and loan funds.